

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
River Bend Farms, Inc. and Ken Root Council Bluffs, Iowa	NO. 2007-AQ- 12 NO. 2007-SW- 07

TO: River Bend Farms, Inc.
Eva Jean Root, Registered Agent
17022 Allis Road
Council Bluffs, Iowa 51503

Ken Root
17024 Allis Road
Council Bluffs, Iowa 51503

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR), River Bend Farms, Inc. and Ken Root for the purpose of resolving the air quality and solid waste disposal violations which occurred at property owned by River Bend Farms, Inc. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Dan Stipe, Field Office #4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, IA 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. On April 13, 2007, Dan Stipe, DNR Field Office #4 supervisor, investigated a complaint regarding the improper open burning of solid waste by Ken Root on property owned by River Bend Farms, Inc. The property was located in Section 1, T73N, R44W, Saint Mary's Township, Mills County, Iowa. The complainant stated the burning had occurred late in the afternoon on April 12, 2007. Mr. Stipe observed smoke coming from the property and noted an area that had been used for burning garbage in the past. He also observed evidence of very recent burning of tires, appliances, and other miscellaneous solid waste. Mr. Stipe spoke to Mr. Root and explained that the improper disposal of solid waste by open burning violated the DNR's regulations. Mr. Stipe informed Mr. Root a Notice of Violation letter would be sent along with a copy of the open burning and solid waste disposal regulations.

2. On April 17, 2007, a Notice of Violation letter was sent to Ken Root and River Bend Farms, Inc. The letter explained the violations observed by Mr. Stipe on April 13, 2007, and stated the matter would be referred for further enforcement. Mr. Root and River Bend Farms, Inc. were also required to properly dispose of the remaining solid waste on the property by May 15, 2007 and submit the landfill receipts to DNR Field Office #4 within 10 days of disposing of the solid waste.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Stipe observed tires, appliances, and other miscellaneous solid waste that had been burned by Mr. Root at property owned by River Bend Farms, Inc. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-121.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Tires, appliances, and other

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miscellaneous solid waste were burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and River Bend Farms, Inc. and Ken Root agree to do the following:

1. Cease all open burning of tires and other non-exempt solid waste in accordance with 567 IAC 23.2(1);
2. Dispose of all solid waste materials in accordance with 567 IAC 100.4 and submit the landfill receipts to DNR Field Office #4 within 30 days from the date the Director signs this administrative consent order; and
3. Pay a penalty of \$1,200.00 within 60 days from the date the Director signs this administrative consent order.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the director to assess administrative penalties, a penalty of \$1,200.00 is assessed effective 30 days from the date this administrative consent order is signed by the Director. The penalty shall be paid within 60 days of the date this administrative consent order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this chapter, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – River Bend Farms, Inc. and Ken Root have achieved an economic benefit by burning solid waste rather than properly disposing of the solid waste. River Bend Farms, Inc. and Ken Root have saved time, effort, and landfill fees by not

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properly disposing of the solid waste. Based on the above considerations, \$200.00 is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The violations threaten the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$700.00 is assessed for this factor.

Culpability – River Bend Farms, Inc. and Ken Root have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Based on the above considerations, \$300.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of River Bend Farms, Inc. and Ken Root. For that reason, River Bend Farms, Inc. and Ken Root waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE


Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

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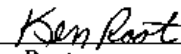
RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 11 day of
June, 2007.

Riverbend Farms, Inc.


River Bend Farms, Inc.

Dated this 1 day of
June, 2007.



Ken Root

Dated this 1 day of
June, 2007.

Barb Stock (Con 10-6 Mills County); Kelli Book; Dan Stipe; EPA; V.L.C and VIL.C.1